IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.40 of 2001.

Judgment Reserved on:24.8.2007

Date of decision: 11.09.2007

Tarsem Lal ….**Petitioner**

Versus

Ravinder Nath ….**Respondent**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?

For the Petitioner: Mr.B.K. Sood vice Mr.K.D. Sood, Advocate.

For the Respondent: Mr.H.K. Bhardwaj, Advocate.

Dev Darshan Sud,J.

This is the tenant's revision against the judgment of the learned Appellate Authority holding him to be in arrears of rent determined at the rate of 500/- rupees per month.

The respondent-landlord instituted an eviction petition under Section 14 of the H.P. Urban Rent Control Act, 1971 (hereinafter referred to as the `Act') on the ground that the petitioner was tenant in one Khokha measuring 14x9 feet, situated on Khasra No.4591/1 in Ward No.7 at Bhunter in Kullu. The allegation in the eviction petition was that the Khokha had been constructed by the respondent-landlord

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***Whether the reporters of Local Papers may be allowed to see the judgement*?**

and was being used as a workshop by the tenant-petitioner for carrying on his business. Rent at the rate of Rs.500/- per month was claimed by the respondent-landlord and it was also averred that he was in arrears of rent from August, 1994 till date of filing of the petition. The tenant-petitioner contested the petition on a number of grounds inter alia that the landlord was not the owner of the land, the rent was not fixed at Rs.500/- per month, the petition was bad for non-joinder of necessary parties etc. On a consideration of the entire evidence, the learned trial Court held that there was no substance in the submissions made by the tenant-petitioner that the respondent-landlord was not the owner of the premises. The learned Rent Controller concluded that the petitioner was not in arrears of the rent at the rate as claimed by the respondent-landlord. An issue regarding adverse possession has also been raised on the plea of the tenant that the petition was barred by limitation. This issue was not pressed. On the issue of adverse possession, the learned Rent Controller held in favour of the respondent-landlord. I must express my surprise at the manner in which the petition has been adjudicated since claim of title is never determined under the Act and these are issues which are in the exclusive domain of the Civil Court.

In ***Satya Devi vs. M/s.Ram Gopal Angania Ram and Others, ILR (HP Series) 1986, 293)*** this Court held*:-*

> ***"6.*** *It is well settled law that it is within the domain of Rent Controller to find out if relationship of landlord and tenant exists between the parties arrayed before him and further that mere denial of such relationship would not oust his jurisdiction. At the same time, his is not the proper forum for determining the question of title which has to be decided by a civil court. In other words, if Rent Controller is of the view that he cannot determine the question of relation ship of landlord and tenant between the parties without deciding the question of title he can refer the parties to the civil court. In this connection, reference may be had to the law laid down in Om Parkash Gupta vs. Dr.Rattan Singh and another, 1963, PLR 543, M/s Kharati Ram Bansi Lal and others vs. Smt.Radha Rani and another, 1968 PLR 978 and Dev Raj and another vs. Sodhan Devi and others, 1978 RCR 146).*

In the landlord's appeal to the learned Appellate Authority, the entire evidence was considered by the learned Court being the final court of fact and it was held that the findings of the learned Rent Controller holding that the rate of rent was not Rs.500/- per month was not correct. Learned

Appellate Authority has considered the evidence in detail and has given cogent and convincing reasons for rejecting the same. The learned Court held that reliance placed by the tenant on some compromise having been effected before the Gram Panchayat could not be relied upon because no document evidencing such compromise showing creation of tenancy had been produced on the record of the case and the oral submission made by the tenant-petitioner was not sufficient to establish the existence of such arrangement establishing his tenancy under the Panchayat. Exs.R-1 to R-3, in the nature of receipts, produced by the tenant to show that he was paying rent, at the rate as alleged by him, to the respondent-landlord did not establish the identity of the property qua which such rent was being paid, as house number, khasra number etc. was not mentioned therein. The learned Appellate Authority noted in detail that Exs.R-1 to R-6 are receipts issued by the Notified Area Committee, Bhunter pertaining to House Tax in the name of Laj Wanti and not of the petitioner. The other evidence on the record in the nature of installation of the electric meter by the Himachal Pradesh State Electricity Board also did not identify the premises but only the name of the petitioner.

On the totality of the evidence, the learned Appellate Authority held that the case set up by the

petitioner was not proved by him and in the entirety of the evidence produced by the landlord including the witnesses before whom the rent has been settled, namely; PW-2 and PW-3, corroborating the evidence of the landlord on another material particulars, the only inescapable conclusion was that the rent of the premises had been fixed at Rs.500/- per month. He accordingly allowed the revision holding the tenant-petitioner to be in arrears of rent.

Learned counsel appearing for the petitioner has assailed the judgment of the learned Appellate Authority on a number of grounds. So far as the ground of adverse possession/ownership is concerned, that point cannot be allowed to be urged by the petitioner in these proceedings. Even otherwise, on a detailed consideration of the matter, the entire evidence on record, both the Courts below have held that there is no substance in the case put forth by the tenant-petitioner. On the question of determination of rent payable to the landlord, the learned Appellate Authority has rightly concluded that the rate had been fixed at Rs.500/-. There is nothing in the statements of PW-2 and PW-3, namely, S/Shri Manmohan Gautam and Lotam Ram that the same are not worthy of credence and cannot be relied upon for decision of this case. The documents produced on the record by the tenant to establish a different rate of rent of the premises, cannot be accepted as the

learned Appellate Authority has rightly held that the documentary evidence produced on record does not establish the plea of the tenant nor identifies the premises qua which such receipts were issued.

In revision it would not be the function of this Court to re-appreciate the evidence to come to a different conclusion. I am unable to find any illegality which has been committed by the learned Appellate Authority which has assigned clear and cogent reasons for negativating the plea of the tenant-petitioner that rent at the rate of Rs.500/- per month has not been agreed to be paid by the tenant. The Rent Controller had committed a grave illegality in ignoring the fundamental principle of the law of evidence that the identity of the property, which is the subject matter of the proceedings, has to be established.

In the facts and circumstances of the case, I hold that no illegality has been committed by the learned Appellate Authority calling for the intervention of this Court. This revision is accordingly dismissed. There shall be no order as to costs.

The amount deposited by the tenant in this Court towards rent of the premises alongwith interest, if any, will be released in favour of the respondent-landlord.

All miscellaneous applications stand disposed of.

September 11, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**